

118TH CONGRESS  
1ST SESSION

# S. 1795

To modify the criteria for recognition of accrediting agencies or associations for institutions of higher education.

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IN THE SENATE OF THE UNITED STATES

JUNE 1, 2023

Mr. RUBIO (for himself, Mr. LEE, and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To modify the criteria for recognition of accrediting agencies or associations for institutions of higher education.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Higher  
5 Education Accreditation Act”.

6 **SEC. 2. CRITERIA FOR RECOGNITION OF ACCREDITING**  
7 **AGENCIES OR ASSOCIATIONS.**

8 Section 496 of the Higher Education Act of 1965 (20  
9 U.S.C. 1099b) is amended—

10 (1) in subsection (a)—

1 (A) in paragraph (5)—

2 (i) in subparagraph (I), by striking  
3 “and” after the semicolon;

4 (ii) in subparagraph (J), by inserting  
5 “and” after the semicolon; and

6 (iii) by inserting after subparagraph  
7 (J), and before the flush text, the fol-  
8 lowing:

9 “(K) except in the case of an institution  
10 described in subsection (r)(2), success in ensur-  
11 ing a right of free inquiry (as defined in sub-  
12 section (r)(1));”;

13 (B) in paragraph (7), by striking “and”  
14 after the semicolon;

15 (C) in paragraph (8), by striking the pe-  
16 riod at the end and inserting “; and”; and

17 (D) by adding at the end the following:

18 “(9) as part of the accrediting process, such an  
19 agency or association shall not consider—

20 “(A) the diversity, equity, and inclusion  
21 policies of an institution of higher education;  
22 and

23 “(B) the racial composition of the accepted  
24 applicants, students, or the faculty or staff, of  
25 an institution of higher education.”;

1           (2) in subsection (g), in the second sentence, by  
2 striking “Nothing in this Act” and inserting “Sub-  
3 ject to subsection (a)(9), nothing in this Act”;

4           (3) in subsection (p), by striking “Nothing in  
5 subsection (a)(5)” and inserting “Subject to sub-  
6 section (a)(9), nothing in subsection (a)(5)”; and

7           (4) by adding at the end the following:

8           “(r) FREE INQUIRY.—

9           “(1) FREE INQUIRY.—In this section, the term  
10 ‘free inquiry’ means—

11           “(A) in the case of a public institution of  
12 higher education that is legally required to  
13 abide by the First Amendment to the Constitu-  
14 tion, compliance with—

15           “(i) the First Amendment to the Con-  
16 stitution, including protections for freedom  
17 of speech, association, press, religion, as-  
18 sembly, and petition; and

19           “(ii) the institution’s own written poli-  
20 cies regarding academic freedom; or

21           “(B) in the case of a private institution of  
22 higher education, adherence to the institution’s  
23 written institutional policies concerning freedom  
24 of speech, association, press, religion, assembly,  
25 petition, and academic freedom.

1           “(2) RELIGIOUS EXEMPTION.—An institution  
2 described in any of subparagraphs (A) through (F)  
3 shall not be subject to the free inquiry requirements  
4 of subsection (a)(5)(K). Such exempt institutions  
5 shall include:

6           “(A) An institution that is a school or de-  
7 partment of divinity.

8           “(B) An institution that requires its fac-  
9 ulty, students, or employees to be members of,  
10 or otherwise engage in religious practices of, or  
11 espouse a personal belief in, the religion of the  
12 organization by which it claims to be controlled.

13           “(C) An institution that in its charter or  
14 catalog, or other official publication, contains  
15 an explicit statement that it is controlled by a  
16 religious organization or an organ thereof, or is  
17 committed to the doctrines or practices of a  
18 particular religion, and the members of its gov-  
19 erning body are appointed by the controlling re-  
20 ligious organization or an organ thereof, and it  
21 receives a significant amount of financial sup-  
22 port from the controlling religious organization  
23 or an organ thereof.

24           “(D) An institution that has a doctrinal  
25 statement or a statement of religious practices,

1 along with a statement that members of the in-  
2 stitution community must engage in the reli-  
3 gious practices of, or espouse a personal belief  
4 in, the religion, its practices, or the doctrinal  
5 statement or statement of religious practices.

6 “(E) An institution that has a published  
7 institutional mission that is approved by the  
8 governing body of an educational institution  
9 and that includes, refers to, or is predicated  
10 upon religious tenets, beliefs, or teachings.

11 “(F) An institution with respect to which  
12 there is other evidence sufficient to establish  
13 that the institution is controlled by a religious  
14 organization, pursuant to section 901(a)(3) of  
15 the Education Amendments of 1972 (20 U.S.C.  
16 1681(a)(3)).”

17 **SEC. 3. CIVIL ACTION.**

18 An institution of higher education (as defined in sec-  
19 tion 102 of the Higher Education Act of 1965 (20 U.S.C.  
20 1002), and including both public and private institutions  
21 as so defined) that is subject to a denial, withdrawal, or  
22 termination of accreditation as a result of an accrediting  
23 agency or association’s violation of the prohibition estab-  
24 lished in paragraph (9) of section 496(a) of the Higher  
25 Education Act of 1965 (20 U.S.C. 1099b(a)), as added

1 by section 2 of this Act, may pursue a civil action in ac-  
2 cordance with subsections (e) and (f) of such section 496.

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